

PETROLEUM TANK RELEASE COMPENSATION BOARD
MINUTES
Business Meeting
March 21, 2005
Department of Environmental Quality
Metcalf Building Room 111, 1520 East 6th Avenue
Helena, MT

Presiding Officer Barry Johnston called the meeting to order at 10:00 a.m. Other Board members present were Greg Cross, Shaun Peterson, and Frank Schumacher. Board Attorney Katherine Orr, in Mr. Johnson's absence, and Executive Director Terry Wadsworth were also present. Terry Cosgrove, Dan Manson and Roger Noble were absent.

Approval of Minutes

The minutes were unanimously approved as written.

Approval Executive Session Topics

Presiding Officer Johnston introduced the matter discussed in the Executive Session. Mr. Cross moved to approve the recommendation to accept a subrogation settlement offer as discussed in Executive session. Mr. Schumacher seconded the motion. **The motion was unanimously approved.**

Eligibility Ratification

Mr. Wadsworth informed the Board that there was one eligibility application before the Board. (See table below). Mr. Schumacher moved to approve the eligibility of the Gerald D. Underwood Water Treatment Plant. Mr. Peterson seconded. **The motion was unanimously approved.**

Board Staff Recommendations Pertaining to Eligibility From January 12, 2005 thru March 8, 2005				
Location	Site Name	Facility ID #	DEQ Release # Release Year	Eligibility Determination – Staff Recommendation Date
Billings	Gerald D. Underwood Water Treatment Plant	56-09746	293 April 1990	Eligible – No reported violations. 2/2/05

Claims over \$25,000

Mr. Wadsworth presented the Board with the claims for amounts greater than \$25,000 since the last Board meeting (See table below). There was one claim totaling \$99,550.13. Mr. Cross moved to approve the claim over \$25,000. Mr. Peterson seconded. **The motion was unanimously approved.**

Location	Facility Name	Facility ID#	Claim #	Claimed Amount	Reimbursed
Bonner	Stimson Lumber	32-04262	20050126U	\$99,550.13	\$99,550.13
Total					\$99,550.13

Weekly Reimbursements

Mr. Wadsworth presented the Board with the summary of weekly claim reimbursements for Board ratification (See table below). There were 251 claims, totaling \$721,361.73.

Mr. Wadsworth also pointed out that there are six claims with zero reimbursement in the packet: Five for M&H Gas (release ineligible) and one for Energy One Stop (work not associated with an Department-approved corrective action plan).

Mr. Cross noted that a large percentage of the claims were for monitoring, study and work plans. He stressed that there needs to be a move away from monitoring and studying towards removing the greatest source of contamination first and monitoring afterwards. He suggested the Board work with the consultants to draft a process that will work with DEQ.

Sandi Olsen, Remediation Division Administrator, responded that much of the monitoring is remedial investigation in an effort to determine the extent of the contamination.

Presiding Officer Johnston noted that many of the sites being monitored are quite old, and the Board is interested in cooperating with the Department and consultants to move sites into the cleanup stage as soon as possible, rather than conducting long-term monitoring.

Mr. Schumacher moved to approve the weekly claims reimbursements for the weeks of January 19, 200 through March 9, 2005. Mr. Peterson seconded. **The motion was unanimously approved.**

<u>WEEKLY CLAIM REIMBURSEMENTS</u> <u>MARCH 21, 2005 BOARD MEETING</u>		
<u>Week of</u>	<u>Number of Claims</u>	<u>Funds Reimbursed</u>
January 19, 2005	25	\$96,196.85
January 26, 2005	27	\$90,562.51
February 2, 2005	32	\$91,461.21
February 9, 2005	24	\$90,555.41
February 16, 2005	38	\$89,991.03
February 23, 2005	49	\$90,070.89
March 2, 2005	36	\$79,244.87
March 9, 2005	20	\$93,278.96
Total	251	\$721,361.73

Claim #20041112-N – Sinclair Oil Co – FacID #07-02088, Release #3442 - Discussion

Mr. Wadsworth introduced this matter to the Board. Claim #20041112-N contains a discrepancy between what the subcontractor charged the contractor and what the contractor charged the Board for loading, hauling and disposal of impacted soils on a site. The staff has requested additional information from the owner/operator on the discrepancy found in the costs. The owner/operator was not able to provide a response prior to the Board meeting. In view of that fact, Mr. Wadsworth asked that the matter be tabled until the next Board meeting.

Presiding Officer Johnston clarified that the reimbursement at issue here has already been paid, and that there was a work plan and bid in place.

Alan Stine, Olympus Technical Services, asked for the floor. He recommends that the Board drop the matter immediately. Work must be done either on a unit (bid) cost or time and materials approach.

Mr. Wadsworth informed the Board that the owner and operator are required by law to document all expenses incurred in preparing and implementing the corrective action plan [75-11-309(1)(f)(i)], and the Board has a statutory requirement to look at whether the costs were actual, reasonable and necessary costs incurred for implementing a corrective action plan [75-11-309(1)(f)(ii)], regardless of what the bid on the project is.

Mr. Lee Bruner, attorney with Poor, Roth & Robinson, stated that once a bid is accepted, that bid becomes the actual cost, regardless of what the subcontractor's invoice cost is.

Presiding Officer Johnston tabled the matter and asked to have it added to the agenda for the next Board meeting, allowing additional time for the owner to respond to the letter of inquiry.

Retaining Owner/Operator Involvement in the Cleanup Process – Discussion Item

Mr. Wadsworth introduced the subject of Owner/Operator involvement in the cleanup process. He explained that several options have been discussed in previous meetings: requiring the owner/operator to sign each claim before it is submitted; requiring the owner/operator to pay a percentage of each claims submitted to the Board (this option would require a rule or statute change); raising the minimum amount allowed for a claim; or combinations of any of the above. In an effort to keep the owners and operators involved, the Board staff is sending the Owner/Operator an email (if an email address has been provided) notifying them of any adjustments to claims made pertaining to their site. Other suggested options included the following:

- Require the Owner/Operator to pay for development of the work plans for the site. This would require the Owner/Operator to be involved in the activities associated with work being proposed at the site.
- Require the Owner/Operator to obtain 3 Bids for any proposed work, perhaps for each work plan;
- Require the Owner/Operator to be responsible for maintenance of any wells installed at the facility, including repairs and ensuring easy access.

Mr. Cross reiterated that he feels it is very important to keep the Owner/Operators actively involved in their sites to provide an incentive to urge that money spent on remediation is spent wisely and with an eye to increasing the value of the property. Currently many Owner/Operators stop their involvement once the \$17,500 co-payment has been met.

Presiding Officer Johnston tabled the matter until another time.

LUST Trust Grant Match

Gary Hamel, Budget Manager for the Department of Environmental Quality, addressed the Board concerning the Department's portion of the Board's budget. He provided information concerning the breakdown of the costs included in the proposed FY06 and FY 07 budget requests to the Legislature.

Presiding Officer Johnston asked if the Remediation Division could provide a detailed breakdown of the Fiscal and Administrative Services item of the Departments portion of the Board budget by the next meeting.

The LUST Grant match request in the next biennium is \$65,697 in FY 06 and \$60,187 in FY 07. Mr. Hamel indicated that the Department is looking at the match to try to find other, perhaps better, ways to match the LUST grant. No solutions have been found, but the examination is ongoing, and he will inform the Board of what is discovered.

Presiding Officer Johnston asked Sandi Olsen, Remediation Division Administrator, if he is correct that she does not see any way the Fund can be repaid for the grant match dollars.

Ms. Olsen stated that at this point there is no alternative fund from which to repay the Board. She explained that the LUST grant match was attached to the Board's budget because the Fund from which the grant is usually drawn will have a negative balance in the coming years.

Presiding Officer Johnston stated that the Board's budget is also showing a negative balance in each year of the next biennium, and questioned why the match should be taken from the Fund if both the Fund and the usual source of the match are showing negative balances.

Ms. Olsen explained that, while Presiding Officer Johnston's statement that the Board's budget will also have a negative balance is true, the Board has loan authority, while other Funds do not. The Department is working to try and secure loan authority for other Funds, but has not succeeded as yet. In addition, the match would be used to clean up petroleum-contaminated sites.

Mr. Hamel stated that the Department has requested a study of the Resource Indemnity Trust (RIT) and how various funds that use the RIT as a match source can best use the RIT, so that their dependence on the Fund can decrease.

Mr. Cross asked how the Fund is going to benefit by taking \$65,000 of the its budget as a grant match.

Ms. Olsen indicated that the funds secured by the match would be used to investigate federally defined underground storage tank sites with multiple sources that people are fighting over, try to identify the source of contamination, and clean up sites that are ineligible or where there is no one to clean it up.

Presiding Officer Johnston stated that his concern is if the Department uses the Fund for match of this grant, what is to preclude them from using the Fund to match other grants as well? In addition, this match is \$65,000 of the anticipated Fund budget deficit of \$285,000, and the largest single item in that deficit.

Ms. Olsen stated that the Petroleum Fund statute identifies the scope of allowable costs for which the monies can be spent and none of the other grants can come to the Petro Fund for grant match, as the law is currently written. The Haz Waste / CERCLA law was not written so narrowly, and so is used for many kinds of grant matches, and that is what has triggered the study mentioned before.

Presiding Officer Johnston noted that he had previously asked Paul Johnson, Board attorney, to confirm the legality of the Fund being used for the grant match. That determination needs to be made before the Fund will pay out the grant match request.

Earl Griffith, Tetra Tech, asked what happens if the entire grant is not used in a fiscal year. Are any of the matching funds returned to the state?

Ms. Olsen stated that if the federal portion of the grant is not completely expended, the state share is not drawn from the Petroleum Fund.

Presiding Officer Johnston noted that the Department's portion of the budget is approximately 10% higher than last year. He admonished the Department that, with revenues flat or declining and fewer releases being reported, the Department's share of the Petroleum Fund expenditures cannot continue to increase. Most of the Fund's negative balance in the coming biennium is as a result of increases in the Department's portion of the budget. He noted that roughly a quarter of the Fund's total budget is for administrative costs, and that percentage is too high. He indicated that many similar funds in other states keep administrative expenses to 15% of the budget. With that in mind, the Department's budget, and perhaps the Board staff's budget, have to start coming down as a percentage of the overall revenue. He stated that the Board would ask the Board staff and the Department to reduce expenses for the 2008-2009 biennium budget. He then asked for a motion to direct the Petro Fund staff and the Department to decrease expenses as discussed.

Mr. Schumacher moved to decrease the combined Board/Department budget by five percent per year or ten percent per biennium until such time as the administrative expenses equal 15% of the total budget, beginning with the 2008-2009 biennial budget. Mr. Cross seconded the motion. **The motion was unanimously approved.**

Legislative Update

Mr. Wadsworth provided the Board a brief update on legislative activity. Senate Bill 145 was passed by the Senate Energy and Telecommunications Committee and has been passed by the Senate. The House Natural Resources Committee has heard the bill, but has not taken executive action. The 2006-2007 biennial budget passed from the House Appropriations Subcommittee to the full Committee and has been through second reading on the House floor and is awaiting third reading. After third reading it will go to the Senate Finance Committee.

Fiscal Report

Mr. Wadsworth presented the Board with the current Fiscal Report. He noted that the personal services portion of the projected fiscal year-end balance is over budget by \$35,523. He indicated the overage is a result of only 4.5 FTEs budgeted and yet the staff transferred from the Department is 6.0 FTEs. The Department has agreed to transfer funds from their budget into the Board's budget in May. This will properly allocate Personal Services Budget for the staff shifted from the Department to the Board staff as a result of House Bill 368 in the 2003 legislature. Claim payments are anticipated to be over budget by approximately \$85,000.

Ms. Olsen addressed the DEQ portion of the current budget. The Department is anticipating a positive balance of \$133,424 at the end of the fiscal year.

Board Attorney Report

Katherine Orr, attorney for the Board in Mr. Johnson's absence, noted that many of the pending cases are quite old and suggested that the Board may wish to try to get some of them resolved.

PTRCB Case Status Report as of March 21, 2005				
Location	Facility	Facility # & Release #	Disputed/ Appointment Date	Status
Boulder	Old Texaco Station	22-11481 Release # 03138	Eligibility 11/25/97	Dismissal Pending because cleanup of release completed
Thompson Falls	Feed and Fuel	45-02633 Release # 03545	Eligibility	Case was stayed on 10/21/99
Eureka	Town & Country	27-07148 Release #03642	Eligibility 8/12/99	Hearing postponed as of 11/9/99.
Helena	Allen's Oil Bulk Plant	25-01025 Release #02893	Eligibility 11/29/99	Case was stayed on 1/21/00
Butte	Shamrock Motors	47-08592 Release #03650	Eligibility 10/1/99	Case on hold pending notification to Hearing Officer
Whitefish	Rocky Mountain Transportation	15-01371 Release #03809	Eligibility 9/11/01	Ongoing discovery. No hearing date set.
Lakeside	Lakeside Exxon	15-13487 Release #03955	Eligibility 11/6/01	In discovery stage
Helena	Noon's #438	25-03918 Release # 03980	Eligibility 2/19/02	Case stayed
Wolf Point	Isle Oil Co	43-08893	3 claim adjustments 12/21/02	Hearing stayed
Belt	Mary Catherine Castner	07-12039	Eligibility 11/22/02	Mar 12, 2003 stayed for up to one year.
Dillon	Town Pump Dillon #1	01-08695	Eligibility Mar 7, 2005	Hearing Examiner appointed

Mr. Wadsworth noted that the staff and Mr. Johnson are evaluating future actions on these cases. He also indicated that he has received a request from Ms. Michelle Isle for the Board to be updated at this meeting on the Wolf Point Isle Oil matter. The matter involves three claims and the two-year rule. The hearing process was stayed to await the outcome of House Bill 368 in the 2003 Legislature. That bill amended 75-11-308, MCA to adjust the two-year rule to a five-year rule. There appears to be an inconsistency between the *save clause* and the *applicability clause* that affects how the law applies to the Isle Oil claims. Mr. Johnson will investigate the matter, and the results of that investigation may affect the Board's position with regard to the Isle claims. Mr. Wadsworth stated that he will inform Ms. Isle of the Board's position when Mr. Johnson's examination is complete and the Board has had an opportunity to review his report.

Mr. Cross asked whether the stayed cases represent an outstanding liability to the fund.

Mr. Wadsworth indicated that they do represent potential liability contingent upon the outcome of a hearing. He also indicated there is liability associated with some claims that have been suspended for various reasons, such as lack of proof of payment, the staff would like to resolve. He suggested the Board might wish to move forward with paying the portions of those claims that are not awaiting proof of payment or other items, in order to clear them off the shelf and reduce liability. However, he would like to wait to see if the budget will be balanced for the year before moving forward with that action.

Earl Griffith, Tetra Tech, addressed the Board concerning the Isle Oil matter. He asked that the matter be resolved as quickly as possible and rectify what he views as a wrong, in favor of the Isles. He noted that the site is ready to be closed.

Board Staff Report

Mr. Wadsworth presented the Board with the staff report. In addition to the summary of claims for reimbursement and eligibility status, included in this report is a summary of the number and value of corrective action plans reviewed. Board staff is looking for a leading indicator to help project funds expenditures required for the next six months to a year. There is no apparent correlation between the work plans approved and the volume of claims received. A year-to-year

comparison shows an increase in the number of plans reviewed, but only a slight increase in dollars associated with the plans.

Presiding Officer Johnston noted a declining trend in the dollar value of work plans submitted since May of 2004.

Petroleum Release Section Activity Report

Mike Trombetta, Hazardous Waste Bureau Chief, presented the Petroleum Release Activity Report. This report begins a new calendar year. There are five new releases since January 1. The majority of the releases are from piping. There are no tank releases at this time. He noted that leaks are still being reported from older tanks that are discovered during excavation, and above ground tanks.

Case Study

Presiding Officer Johnston has asked the Department to present a case study of a leak site at the next several meetings in order to assist the Board members and the public in understanding how the Department handles such sites, what the costs are and how the project will move forward. The site chosen for presentation at this meeting was Ennis Office Park in Ennis given by Jeff Kuhn.

Public Forum

Mr. Wadsworth presented the Board with information on the current statutory framework with regard to owners/operators carrying insurance for sudden and accidental releases. The statute currently provides no incentive to encourage owner/operators to carry insurance. With regard to the upcoming above ground storage tank program that will likely require statutory changes, the Board may wish to structure the statutes to provide incentives for underground storage tanks, as well.

There were no comments from the public.

The next schedule Board meeting is May 23, 2005.

Meeting adjourned at 12:19 p.m.

Barry Johnston